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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,737	12/29/2000	Sherena D. Fortune	00-0837	7141

7590 11/17/2003

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EXAMINER

GOODWIN, JEANNE M

ART UNIT	PAPER NUMBER
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2841

DATE MAILED: 11/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/751,737

Applicant(s)

FORTUNE, SHERENA D.

Examiner

Jeanne-Marguerite Goodwin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 6, 11 and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,131,399 to Hall [hereinafter Hall].

Hall discloses a date code sensitive system for signaling when an expiration date of a product has passed said system comprising a food product (14) being loaded into each compartment (18), a bar code reader reads the expiration date and assign the same to the that compartment, a bar code scanner (88) which is situated to actively read the bar code on a particular item. As illustrated in FIG. 2, the scanner (88) scans the bar code of a particular product if the product (14) is expired, a processor (62) blocks sale thereof. Optionally, a sign or display (94) may illuminate so that the consumer is aware of why the product in a compartment is not for sale.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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4. Claims 2-5, 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall.

Hall discloses a device as stated above with regards to claims 1, 6, 11 and 12. Hall discloses all the subject matter claimed by applicant with the exception of the limitation stated in claim 2, i.e., the bar code indicia comprises a plurality of bars being marked on the product, each of said bars being arranged in a manner indicating a particular expiration date of the product; the limitation stated in claim 3, i.e., each of the bars is oriented substantially parallel to each other; the limitation stated in claim 4, i.e., a substrate having a top surface, each of said bars being marked on said top surface of said substrate; the limitation stated in claim 5, i.e., said substrate has a bottom surface with an adhesive thereon; and the limitation stated in claims 7 and 13, i.e., the processor is adapted to compare the date of detection of the bar code indicia to the expiration date of the product.

With regards to the limitations stated in claims 2-5: Although not clearly indicated by Hall the particular type of bar code indicia used: Official Notice is taken in respect to the particular type of bar code indicia since it is well known in the bar code art to use a substrate having an adhesive to attach to the item and the substrate having bars oriented substantially parallel to each other and arranged in a manner indicating a particular expiration date of the item as claimed by applicant. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to replace the bar code indicia, as taught by Hall, with the bar code indicia, as taught by applicant, since both are alternative types of indicating elements which will provide the same function, if one is replaced with the other, of indicating a particular type of data, e.g. expiration date of a product.

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With respect to the limitation stated in claims 7 and 13: It has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. See *In re Hutchinson*, 69, USPQ 138.

5. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,196,686 to Leister [hereinafter Leister] in view of US Patent 6,550,685 to Kindberg [hereinafter Kindberg].

Leister discloses a checkout system comprising a bar code indicia indicating the price of the product, a detecting means (28) for scanning the bar code, wherein the detecting means (28) is mounted in a counter under a scanner window (30), a processor (78) connected to bar code reader (28) and a signaling means (42, 44 and 46) being operationally coupled to the bar code reader (28) and processor (78), wherein the signaling means (44 and 46) are red and green indicator lights. Leister discloses all the subject matter claimed by applicant with the exception of the limitation stated in claims 1 and 15, i.e., the bar code indicia indicating the expiration date of the product; the limitation stated in claims 2 and 15, i.e., the bar cod indicia comprises a plurality of bars being marked on the product, each of said bars being arranged in a manner indicating a particular expiration date of the product; the limitation stated in claims 3 and 15, i.e., each of the bars is oriented substantially parallel to each other; the limitation stated in claims 4 and 15, i.e., a substrate having a top surface, each of said bars being marked on said top surface of said substrate; the limitation stated in claims 5 and 15, i.e., said substrate has a bottom surface with an adhesive thereon; and the limitation stated in claims 7, 13 and 15, i.e., the processor is

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adapted to compare the date of detection of the bar code indicia to the expiration date of the product.

With respect to the limitation stated in claims 1 and 15: Kindberg discloses using two bar code indicators on a product, a first identifies the product to the checkout scanners for pricing and a second identifying the expiration date. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add a second bar code indicator, as taught by Kindberg, to the products of Leister, as a way of indicating to the user that the product has exceeded its shelf life and the product should be removed from purchase.

With regards to the limitations stated in claims 2-5 and 15: Although not clearly indicated by Leister the particular type of bar code indicia used: Official Notice is taken in respect to the particular type of bar code indicia since it is well known in the bar code art to use a substrate having an adhesive to attach to the item and the substrate having bars oriented substantially parallel to each other and arranged in a manner indicating a particular expiration date of the item as claimed by applicant. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to replace the bar code indicia, as taught by Leister, with the bar code indicia, as taught by applicant, since both are alternative types of indicating elements which will provide the same function, if one is replaced with the other, of indicating a particular type of data, e.g. expiration date of a product.

With respect to the limitation stated in claims 7, 13 and 15: It has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. See *In re Hutchinson*, 69, USPQ 138.

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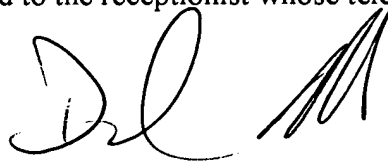
Response to Arguments

6. Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Examiner Jeanne-Marguerite Goodwin whose telephone number is (703) 305-0264. The examiner can normally be reached on Monday-Friday (9am-6pm), alternate Fridays off. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7724. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

JMG
Nov. 6, 2003



DAVID MARTIN
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